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FALSTAFF'S DESCENDANTS IN PENNSYLVANIA COURTS

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Old lawyers' tales united education with entertainment for students and young lawyers in days when they made their way to the bar through apprenticeship in law offices. The mills in county seats ground slowly before the first World War, and attorneys waiting for their cases to be reached or for juries to report would gather in the judge's chamber or in the more stimulating atmosphere of the tavern and talk—always about lawyers and lawsuits. The legal lore of the locality and the strategy by which its famous cases had been won or lost were thus transmitted to the oncoming generation. It was a casual substitute for the dining customs of the English Inns of Court in maintaining the *esprit de corps* of the profession. One such tale that I think is worth recording concerns litigation that descended through generations of a most uncommon family, and for over a half-century occupied the legal profession in my native Warren County in northwestern Pennsylvania. It has the quality, by no means indispensable to an old lawyer's story, of being supported by the record.¹

I.

Warren, Pennsylvania, in 1836 was a settlement of about sixty families, whose cabins and rough houses nestled in the narrow valley

1. The legal aspects of the story, which give little hint of its underlying drama, are interred in the following records of the Pennsylvania Supreme Court: *Sager v. Galloway*, 113 Pa. 500, 6 Atl. 209 (1886); *Sager v. Cobham*, 6 Atl. 212 (1886); *Sager v. Lindsey*, 118 Pa. 25, 13 Atl. 211 (1888); *Sager v. Mead*, 164 Pa. 125, 30 Atl. 284 (1894); *Sager v. Mead*, 171 Pa. 349, 33 Atl. 355 (1895); *Salvation Army v. Lawson*, 293 Pa. 459, 143 Atl. 113 (1928). Many of the cast I have known personally, and all were familiar by reputation. I am indebted to J. H. Alexander, of Warren, for access to the paper books involved in the last, or at least the latest, of these litigations.

where Connewango Creek joins the Allegheny River. The community was stirred that spring by the arrival of George A. Cobham and his family. They were not ordinary pioneers hardened by the struggle to draw an existence from land and forest. Cobham had the ingratiating manners of an English gentleman educated for the law. His lady had a grace and gentility strange to the raw life of the frontier. With them, and assumed to be children of the couple, were two robust boys, George A. and Henry Oldcastle Cobham, and a baby girl.

From the beginning the Cobhams were a friendly family but also one of mystery and of reserve which did not encourage prying into their affairs. Cobham did not settle in the little town. Instead, he bought an isolated cabin a few miles up the mountainside whose owner could not keep up payments for land that would respond only grudgingly to husbandry. The villagers thought it was an eccentric and impractical choice for a man with a family. Yet, the site had undeniable charm, which clings to it still, as it looks toward the sunset and down upon the wooded valleys where the winding creek and river meet. The Cobhams all came to love it with an intensity typical of the British landlord. Cobham named his cabin and its little clearing "Cobham Park," a vanity that amused the unromantic settlers who began to call the proprietor "Lord Cobham," a title which mingled respect and derision.

It took a half-century of family litigations, which were the chief legacy left by Cobham, to fully disclose the weird background of this eccentric man and his family. While the title imputed to him was fictitious, he had indeed come of a family that included nobles, martyrs, barristers and rich merchants.² Cobham was directly descended from Sir John Oldcastle, who held the title of Baron Cobham.³ Oldcastle

2. HENRY OLDCASTLE COBHAM, OURSELVES, A SAD TALE, SADLY TOLD AND SADLY ENDED. Under this melancholy title Henry recorded in blank verse the annals of his family. It was published by the Publishing House of the United Evangelical Church, Harrisburg, Pa., and privately circulated. For a copy I am indebted to Mr. and Mrs. Hugh Jamison, present owners of Cobham Park.

3. BURKE'S PEERAGE 438 (99th ed. 1949), traces the Cobham barony. Henry de Cobham in 1211 gave to King John one thousand marks for his favor. When the third Baron Cobham died in 1407, his granddaughter Joan became Baroness Cobham in her own right. Sir John Oldcastle, her fourth husband, was summoned to Parliament as a baron, apparently in her right. After his execution for heresy and treason, she married again. Her only issue to survive her was a daughter, Joan, who likewise became Baroness Cobham in her own right. She married Sir Thomas Brooke, a member of Parliament, and the barony then remained with their descendants for several generations. Henry Brooke, the eleventh Baron Cobham, was attainted for treason in 1603 and his honor forfeited. The right to the barony during several generations was subject to the attainder. In 1912, the Committee on Privileges of the House of Lords declared that, but for the attainder, Dr. Reginald Gervase Alexander, a distinguished physician, was a co-heir to the barony of Cobham. In 1916, Parliament removed the effects of the attainder of 1603. However, Dr. Alexander died before this action, so the barony of Cobham was called out of abeyance in favor of his son as the fifteenth Baron Cobham. He died unmarried

enjoyed a notorious youth as the intimate of "Merry Prince Hal" and shared the follies of him who became King Henry V. Invested with the Crown, Henry changed his habits and his company and, as age cooled the Oldcastle blood, the Baron became a convert to the Lollard movement which initiated the Protestant Reformation. He was so prominent in that schism as to incur the wrath of the Roman Archbishop Arundel, who convoked a Prelate's Court which tried and convicted Oldcastle as a heretic. In desperation, the victim added treason to heresy, and on December 14, 1417 he was suspended in chains and burned alive in St. Giles Field.

Oldcastle was the inspiration and the model for Falstaff, who romps and riots so merrily with Prince Hal throughout Shakespeare's *Henry IV, Part I*. The part was first played under the Oldcastle name, but his descendants objected and the author rechristened the character with the pseudonym Falstaff. The great dramatist, in *Henry IV, Part II*, portrays an unhappy, but not the true, end of Oldcastle, when the Prince raised to King, with the overrighteousness often seen in the reformed, denounces "the tutor and the feeder of my riots" and banishes him on pain of death "not to come near our person by ten mile." Whether, and by how much, Falstaff exaggerates the levity and lewdness of Oldcastle we do not know, but historians are in accord with the poet that Oldcastle presented a picturesque degree of conviviality, financial untrustworthiness and visionary vanity, along with a somewhat belated but fanatical religious fervor.⁴ The qualities, in

in 1933 and was succeeded in the peerage by his brother, Robert Disney Leith Alexander, the sixteenth and present Baron Cobham. It thus appears that during the lives of all of the Cobhams with whom we are concerned, the barony was in abeyance and under the effects of the attainder. It does not appear that they would have been entitled to receive it in any event. They were unquestionably of Oldcastle blood, although of the Cobham name, but the peerage was not Oldcastle's and they do not appear to be descended from the wife whose title it was.

4. The rise and fall of the "inimitable Falstaff" of the drama and Shakespeare's adoption of that felicitous name after objections to the portrayal of Oldcastle by name is set forth in the introductions in HUDSON, SHAKESPEARE'S HENRY IV, PART FIRST AND PART SECOND AND HENRY THE FIFTH (1880). Despite the bard's promise in the Epilogue to the latter to "continue the story, with Sir John in it" HENRY V does not mention him, a breach of promise which Hudson in his Introduction explains on the ground that "Sir John's dramatic office and mission were clearly at an end when his connection with Prince Henry was broken off." That there may have been other reasons for ceasing to lampoon a character recognizable at the time as Oldcastle appears possible if we turn from drama to history.

OXFORD DICTIONARY OF NATIONAL BIOGRAPHY devotes over seven and one-half pages to Sir John Oldcastle, styled Lord Cobham (died 1417) who "came of a family of consideration." Oldcastle, through his friendship with the Prince, obtained many opportunities for service to the Crown and won real military distinction, and appears to have become officially attached to the household of the Prince.

Lady Cobham was his third wife. She brought with her the barony and Cobham Manor and Cowling Castle near Rochester. Perhaps in consequence of the marriage Oldcastle was summoned to Parliament in October, 1409, as a baron and similar writs, sometimes regarded as creating a new barony for him under the name Lord Cobham, issued down to the Parliament of March, 1413.

vestigial form, lingered in our Lord Cobham, and the Oldcastle name and tradition were a source of pride and reflected eminence to the whole Cobham family.

The Warren Lord Cobham had an older brother, Henry Oldcastle Cobham, a Liverpool barrister who died in 1825, leaving a young and beautiful widow, Catherine, a small son, Henry Oldcastle, and an after-born son, George A. Cobham. They went to live with the father's aging maiden Aunt Alice, who had a considerable fortune derived from the merchants in the family.

Our Lord Cobham was then a handsome, worldly, impetuous young man, likewise educated for the bar. He fell in love with Catherine and rescued her from widowhood by matrimony. This marriage with his brother's widow, however chivalrous, was one denounced in *Leviticus*, condemned by canon law, and then prohibited by the law of England.

However, Elizabethan dramatists pictured him, "my old lad of the castle," as the supposed companion of Henry V's early follies and as the "aged counsellor to youthful sin." But the NATIONAL BIOGRAPHY points out that until the controversies of his time were passed "a calm judgment of Oldcastle was hardly to be expected" and that the fierceness of the hatreds he aroused survived in literature.

From the history we learn the nature of these controversies in which Oldcastle had supporters as well as enemies. Oldcastle became a convert to the Lollard movement and his position and earnestness made him a formidable leader of them. A convocation at St. Paul's in 1413 heard evidence of his heresy and laid the matter before the King, who tried to persuade him to renounce his views. "Oldcastle was proof against the royal arguments" in a final stormy interview at Windsor and Henry authorized Archbishop Arundel to proceed against him. Oldcastle defied the Archbishop's summons and was excommunicated. After some time, he was arrested under a royal writ and brought before a court consisting of Arundel and two other Bishops, who offered him absolution by submission. He refused defiantly and Arundel declared him a heretic and handed him over to the secular arm for punishment.

The King, anxious to save Oldcastle if possible, allowed him a respite of forty days to recant. Instead, he escaped from the Tower and put himself at the head of a conspiracy against the King. An uprising of his followers was put down and he was eventually captured after a desperate resistance. He was brought before Parliament on December 14, 1417, and summarily condemned as a traitor and heretic. He was taken to St. Giles Fields where he was "hung and burnt hanging." From this record it is "generally supposed that he was suspended horizontally in chains and burnt alive, but the statements of the authorities are consistent with his having been hung first and afterwards burnt." 14 OXFORD DICTIONARY OF NATIONAL BIOGRAPHY 980, 985 (1938).

The DICTIONARY OF NATIONAL BIOGRAPHY also shows that eminence and tragedy accompanied this peerage in the Shakespearean era. The seventh Lord Cobham was a favorite of Elizabeth and entertained her twice at Cobham Hall. His daughter married Sir Robert Cecil. His son Henry succeeded to the barony. But the death of Queen Elizabeth ended his prosperity. Cobham became involved in intrigues and controversies with Sir Walter Raleigh and was sent to the Tower, tried and convicted of treason. James I intervened at the last moment and Cobham was taken back to the Tower alive, where he remained until 1617. Temporarily released for reasons of health, he was stricken and died in poverty. He left no issue. In 1645, Charles I conferred the barony on Sir John Brooke, a second cousin, who likewise died without issue in 1651. 4 OXFORD DICTIONARY OF NATIONAL BIOGRAPHY 610 (1938).

Aunt Alice, however, favored, or at least accepted, the marriage and wanted to provide for this family. Upon the marriage, and perhaps in consideration of it, by a document whose precise form is neither clear nor important now she conveyed considerable property to trustees of whom Cobham was one. They were to pay the income to Catherine during her life and thereafter to George Cobham if he survived her. The principal in part was to go to the two sons of the bride, who also were nephews of the bridegroom, and in part to whom-ever Cobham should designate by his will.

The young couple was carefree, perhaps made twice happy by enjoyment of forbidden fruit. They moved into Fearn's Hall, one of the estates in trust, entertained lavishly, and George was soon over his ears in debt. His individual personal property was levied upon but did not satisfy the debts. So, for a time, he was imprisoned for debt in Lancaster Castle.

From then on, Cobham was deeply involved in legal proceedings. Our only information as to their nature is that their object was to enable creditors to reach the Aunt's gift. However, Cobham's beneficial interest was only a contingent right to income, subject to the prior right of the youthful and robust Catherine to receive the income so long as she lived. So, with the persistence of their kind, creditors launched some form of attack against the validity of her interest. The trust for her, they claimed, was in consideration of her marriage to George, and that marriage was an illegal one. Therefore, they alleged, her life estate was invalid. What the Chancellor or the Ecclesiastical Court would have done with the case, Cobham did not wait to learn. Getting wind of the creditors' intentions, he fled to France, taking his wife and her two sons, thus evading service of the writ. That, so it appears, stalled the proceedings and kept the trust property safely beyond reach of creditors.⁵

But, though they found refuge in France, this English family did not find contentment there. They wanted always to be English. Cobham read the story of young America,⁶ and it seemed to him to invite people such as they to start life anew. There they could dwell

5. It is an interesting coincidence that the current holder of the Cobham title has been adjudicated a bankrupt by the High Court of Justice in England. On behalf of his creditors, the trustee engaged in litigation in the New York courts to reach his beneficial interests in income from a trust set up in this country by his American wife. *Fincham v. Income From Certain Trust Funds*, 193 N.Y. Misc. 363, 81 N.Y.S.2d 356 (Sup. Ct. 1948).

6. Henry Oldcastle Cobham's book, *supra* note 2, attributes the decision to the books by Basil Hall. These three volumes, entitled *TRAVELS IN AMERICA*, were published in Edinburgh in 1829. Works of genuine merit and fascination, they easily may be accepted as the influence in favor of America. Nothing in them, however, and nothing that I have found accounts for the selection of Warren.

among people of English speech and customs, and neither the law nor popular sentiment would stigmatize their marriage. Pioneers, too, were usually debtors, and even if they learned that the Cobhams departed from England between sunset and sunrise, and just ahead of the sheriff, they would not think too ill of them for it. So they risked a turbulent ocean voyage to New York, a weary westward journey over Clinton's new Erie Canal, and a long stage coach trek, to reach at Warren the privacy and peace they sought, and for over thirty years they dwelt there in apparent happiness and comfort.

In time, Cobham built in "Cobham Park" a large two-story house, its living rooms being separated by sliding partitions so all could be thrown into one great hall on festive occasions. The neighbors promptly dubbed it "Cobham's Castle," a name that sticks to it yet, despite many transformations. Its furnishings included items then rare in that region. He added a large barn and laid out a race track. He extended his holdings to some eleven hundred acres, of which less than two hundred were tillable and not over half of that was really cultivated. The rest was fittingly called "the wild lands"—mountainous, rocky, and timbered, home of the bear, the deer, and dens of rattlesnakes.

In his hilltop castle, Cobham led the life of an English country squire. Although dignified, he was convivial—some thought too much so for his own good. His lady was gracious and hospitable. Two more daughters were born to the couple, and as they grew to womanhood the home was the scene of frequent good times and gay parties. If anxieties or discords disturbed the "Castle," they were decently screened from inquisitive commoners. The boys grew to shy, industrious and rather austere youth. They attended Allegheny College in a nearby county. Henry Oldcastle learned and practiced surveying. George A. enlisted and distinguished himself in the Civil War, winning the rank of Brigadier General. He was killed in the Battle of Peach Tree Creek, Georgia, in 1864, leaving an after-born son, Fred Cobham, destined to play a stellar role in the litigious drama of later years. Cobham survived his wife by some years and his last days were lordly even in misery, for he was tortured with gout, an ailment above the station of his neighbors. In the fall of 1870 he died.

For years it had been apparent that Lord Cobham spent far more than his visible income. Rumor said he received funds from abroad, but the source of the remittances was not known. Only after his death was it learned that little, if any, of the money which had gone into Cobham Park and on which the family had lived so well was Cobham's own. The English remittances had come into his hands as trustee

for his wife or her sons. Doubtless Catherine had assented to his use of her portion. But rents due the minor stepsons had also been used by him. Upon the death of Catherine, rights to income had devolved upon Lord Cobham and might be subject to his British debts, which appear to have been kept alive to his perpetual harassment. He besought Henry to act quickly, before his mother's death became known in England, and to use his English inheritance to buy up the British claims. Henry yielded, went to England and sold properties to satisfy the old man's debts, but his solicitors wisely took assignment of them to Henry, rather than releases.

And so, in 1870 when he quit this earth, Lord Cobham left as heirs three daughters—Georgena, Elizabeth and Alice. He also left Henry Oldcastle Cobham, who was nephew by blood, foster son by marriage, never legally adopted, and who also was a creditor in a large amount. There also survived his wife's grandson, Fred, a son of his nephew-stepson Gen. George Cobham, who had some moral if not legal claims against an irresponsible and delinquent trustee.

II.

Within a fortnight of his death, Lord Cobham made a strange and ill-fated will. Cobham Park and the personal property thereon were left in perpetual trust to be a "common home" for Henry Oldcastle and the three daughters, where they should "live together in love and affection and harmony, and have a home and a refuge from the cares and vicissitudes incident to human nature." They could sell no interest in it to each other or to any outsider.

When the last of that generation of tenants should pass away, Cobham Park, undivided, should descend to the eldest son of the eldest daughter, Georgena, but if she had none, then to the eldest son of the next daughter Elizabeth; but if none survived, then to the eldest son of the daughter Alice; and if all these failed, then to the eldest son of Henry, whose progeny was thus last in line. But if no such sons survived, then the estate should go to eldest daughters in the same order. If none of these survived, Cobham Park was to pass to certain English relatives, among them a nephew, John Cobham, contingent, however, upon their removing to Warren and making their home on the premises.

If all of these family benefactions failed, Cobham's fancy was to have free rein. The trustees were to "convert my house into a seat of learning," establish a school and dormitory, and build a church in which "service shall be performed according to the established

Church of England." "In order that the establishment may become one of eminence, my trustees shall engage professors and teachers of Latin, Greek, music, arithmetic, drawing, painting and dancing." And he ordered that "one day in every year shall be a solemn service in the Church, accompanied with a frugal dinner at my dwelling house, to which the gentlemen of Warren shall be invited, where a suitable remembrance of me, my dear wife and family shall be made, and in the evening of such day there shall be a ball to be held at my house . . . at which cards, music, the games of backgammon and chess, and dancing shall be permitted, used and exercised which are not contrary to God's Word, but agreeable thereto." If the convivial old lord could not be a ghost at a banquet, at least he would not become a ghost without one.

This will satisfied no one but the testator—the only respect in which it was not unique. Fred, the son of the soldier nephew, was its forgotten man, being unmentioned. So he washed his hands of the family and for half a century he disappeared from the Cobham annals only to make a late but dramatic re-entry. The three daughters, as sole heirs, would take the entire estate outright, if only the will with its vexatious trusts could be put out of the way. So Elizabeth filed a *caveat* against its probate and it seemed fairly vulnerable to contest.

But there were strong reasons why she would not be allowed easily to set the will aside. Henry Oldcastle Cobham must defend it, for, not being an heir at law, he must hold his legacy under the will or take nothing at all. He was in the strategic position of being an executor and trustee, along with an esteemed lawyer, Rassalas Brown, formerly President-Judge. Henry also held another ace—the British creditors' claims against his uncle—enough, if sustained, to wipe out the estate.

In their bewilderment, the whole family agreed to lay their problems and individual interests in the rugged and honest hands of lawyer Samuel P. Johnson. He was qualified by probate court experience to unravel the Cobham tangle, for he had just resumed private practice after serving ten years as President-Judge, refusing a renomination that was equivalent to election. He found that Cobham's personal property consisted of about forty dollars in the bank and some oddly assorted personal effects, furnishings of the Castle, and farm equipment. He also found debts, not counting Henry's claims, that exceeded the value of this personal property. This suggested a solution: Let the court order the Cobham real estate to be sold to pay debts, in which case the buyer would obtain good title free from the onerous trusts. The family could bid in the property, since they would not be

likely to have competition for a property so little suited to general needs, and they could then divide it among themselves as they saw fit. So, all agreed that the will should not be offered for probate but an administrator would petition for sale of the real estate to pay debts. The three girls and Henry designated the president of a local bank to bid in the property for enough to satisfy all debts, except the claims of Henry, which he appears to have waived for purposes of the settlement. Arbitrators were also named to divide the real property into four parcels, as nearly as possible equal in value, and the three girls and Henry agreed to draw lots to determine which should have first, second, third, and last choice of the parcels thus freed from the old man's fantastic trusts.

This plan was executed by the County's leading lawyers with scrupulous regard for all legal formalities. The executors renounced, and Wilton Lindsey, lately Superintendent of Schools and destined one day to be President-Judge, was appointed administrator. The court, to be satisfied that property was not adequate to pay the debts, named prominent citizens to inventory and appraise it, headed by Charles N. Noyes, a promising young lawyer later also to become President-Judge. Lawyer Johnson set out a schedule of claims which, without Henry's, considerably exceeded the appraised value of the personal property. On that showing the court ordered Lord Cobham's real estate sold to the highest bidder. The Cobhams' agent offered \$4,275, less than \$4 per acre, and there was no other bid. The arbitrators partitioned it into parcels and the four Cobhams drew lots for order of choice. Henry came out last in the drawings, as he had in the will. Lord Cobham's daughters proceeded to choose all the smaller parcels of land, upon which buildings stood. All that was left for Henry was the big parcel of "wild lands," hundreds of acres of them, to be sure, but mountainous, unimproved and untillable. Henry had gambled and lost. It seemed that fate always dealt him losing hands.

Suddenly the fickle Goddess of Chance redeemed herself with Henry Oldcastle Cobham and reversed the advantages of the family settlement in most dramatic fashion. About 1876, oil was discovered in the vicinity of Henry Cobham's wild lands, "oil fever" struck the region, and lands, no matter how wild, soared in value. Elizabeth, with her depreciating buildings and small plot of land, saw Henry enriched because of the great acreage of "wild lands" that she had helped to force upon him. The rest of her life was fanatically devoted to an amazing series of litigations to undo the Cobham family settlement.

The stage was unconsciously set for her actions by the trustfulness of those whom she would pursue. In 1875, for obscure reasons, probably to do with titles or properties in England, the same parties who had withheld Lord Cobham's will from probate all joined in probating it without then naming any executor, administrator or trustee. They thus put the will beyond contest and introduced into the County records a title document which would have made a quite different disposition of the lands than had actually taken place. No one seems to have foreseen the advantage that the litigious Elizabeth would obtain from a will to which she once objected and which might not have withstood a contest.

By 1885, Elizabeth was married to John Sager and, as guardian of her infant son, began two lawsuits, one against Henry Oldcastle Cobham and the other against John Galloway, an oil prospector who had leased some of the "wild lands" from Henry and struck oil. She sought to enjoin them from removing the oil on the allegation that by virtue of the will of Lord Cobham her son owned a remainder in those lands. He was the eldest son of the eldest daughter, Georgena having died childless. When the trial court dismissed Elizabeth's complaint, she appealed, and the Supreme Court of Pennsylvania held against her on the ground that, under the will, her infant son at that time had no more than a contingent interest and would not have a vested interest sufficient to support an action for waste unless and until he reached the age of twenty-one.⁷ Strangely enough, this action was litigated on both sides and decided by both courts on the construction of the will, which seemed to presuppose that it, rather than the Cobhams' court sale, governed the title.

Nor was this Elizabeth's only maneuver. To pay her share of the fees and expenses of settling her father's estate, she had given the administrator a mortgage on her parcel. She now refused to pay on it and he sought to foreclose. Elizabeth defended upon the claim, among others, that because of the will the court never obtained jurisdiction to appoint an administrator. Again Elizabeth lost, and again she appealed. The Supreme Court of Pennsylvania, while ordering retrial of some aspects of the case, held that she could not collaterally impeach the administration proceedings.⁸

One would expect these attacks to warn the rest of the family that she was up to mischief. But, in 1889, no one objected when she asked the Orphans Court to appoint trustees under Lord Cobham's

7. *Sager v. Galloway*, 113 Pa. 500, 6 Atl. 209 (1886); *Sager v. Cobham*, 6 Atl. 212 (1886).

8. *Sager v. Lindsey*, 118 Pa. 25, 13 Atl. 211 (1888).

will, giving as a reason the necessity for investing someone with authority to collect certain assets in England. On the contrary, all stood aside and allowed her to gain control of the trusteeship through appointment of herself, Orren C. Allen, her lawyer, and Ezra Hazeltine, her close friend.

In 1891, Elizabeth and her fellow trustees struck at the titles obtained through the Orphans Court sale by both Henry and her sister, Alice. They alleged in ejectment actions that the sale was induced by fraud on the court, that in truth "Lord Cobham" left personal property adequate to pay all debts and that the whole proceeding to sell the lands was a plot to free the property of the trust and so to deprive any grandchildren of their remainders. Any grandchildren then appearing likely to benefit were her own children, so her motherly instincts helped arouse her fiduciary conscience about the evil of a settlement she herself had made.

Elizabeth was in a position of advantage. The probated will, no longer contestable, afforded a foundation in the record for the trustees' claim of title against those of purchasers at the Orphans sale. Moreover, appointment of herself and her friends as trustees made it possible for her to launch her attack on behalf of beneficiaries who were not parties to the agreements and proceedings now said to be fraudulent. Thus, Elizabeth hoped to escape the legal consequences, if not embarrassment, from the fact that she was a party to the fraud she charged and for twenty years had enjoyed the fruits of it.

The ejectment case, against Alice, came to trial at the September 1891 Term. No civil suit ever so aroused the County. Members of its most-talked-of family were charging each other with fraud—fraud that could have been accomplished only by complicity of its most respected judges, leaders of the County Bar and men influential in public life. They were alive, however, and certain to defend themselves from the witness stand and to face cross-examination by Elizabeth's lawyers—who included her fellow trustee, Orrin C. Allen, later a State Senator, the solid and respected David I. Ball, and George Higgins, long the County's District Attorney and a courtroom lawyer quick on his feet. The defense was in the hands of two young men, Watson D. Hinkley and William E. Rice, each destined later to become President-Judge. Mortimer H. Elliott, a powerful advocate who greatly influenced the judicial evolution of the law of oil and gas and became general solicitor for the Standard Oil Company, was there to protect the interests of the companies that were claimed to have taken illegally untold quantities of oil from the lands. The feud in the Cobham family had divided the bar and the community, and the local judge

had disqualified himself. Of course, the curious were up early the morning of the trial, the courtroom and corridors were filled, and many debated the issue in the courtyard as they watched the arrival of participants.

Judge Olmstead, from another Circuit, specially designated to preside, convened the court. A jury was drawn and those fortunate enough to have seats bent to catch every word as public washing of linen by the local aristocracy began.

Then the spectacle collapsed. Judge Olmstead ruled that Elizabeth's oral testimony was not admissible to upset a record title. He noted that after this "great lapse of time to hold that this whole transaction can be opened at this period and we go back and undo what the Orphans Court did" could not be permitted. "If such things could be done," said he, "there would be no security of titles." Hence, he directed a verdict against Elizabeth and her co-trustees.

But some lawyers thought otherwise. After all, they argued, equity is so hostile to fraud that its presence vitiates any transaction. The determined Elizabeth would find out and so appealed to the Supreme Court of Pennsylvania. It gave her the victory. The Supreme Court held that such a fraud, if proved as alleged, would invalidate the Orphans Court sale, and therefore, ordered a new trial to hear the evidence and decide whether in fact there had been fraud.⁹

Elizabeth's high court triumph after her summary defeat heightened public interest as a retrial began. Judge Mayer, from another Circuit, was designated to preside. He allowed Elizabeth's counsel the widest latitude. But, as so often is the case, allegations are one thing; proof is something else. The support for her sensational charges was lame. Her husband was her best witness and none too good at that. It was said there was some hay on the premises unaccounted for, but he did not know how many tons or what it was worth. There was also a claim that the inventory omitted about a hundred sheep. But it appeared that they were in the keeping of one of Lord Cobham's neighbors on shares. Most of them had predeceased Lord Cobham and the administrator had collected for the rest. Question was raised about some notes and receivables, but these the accounting showed had been collected. Lindsey, the administrator, was present and satisfactorily explained every item Elizabeth's counsel mentioned. It is significant to note here that every person who from personal knowledge could impeach the inventory if it were false or faulty was available to Elizabeth on this trial. Present in court were all the attorneys who handled the settlement, the appraisers who had valued the property,

9. *Sager v. Mead*, 164 Pa. 125, 30 Atl. 284 (1894).

and Henry, who was a party to all of the transactions. Witnesses there were as to any possible question that could be raised about the settlement and sale. But the case ended in anticlimax, its failure being so complete that the judge, despite the high court's reversal of the former decision, again directed a verdict against Elizabeth and her trustees.

Elizabeth took an appeal and for a fourth time gave her name to a leading case in the Supreme Court of Pennsylvania. But now the judges had Elizabeth's evidence instead of her allegations, and they unanimously declared that the evidence of fraud was "flimsy and worthless" and that her attempt to upset the Orphans Court sale on it was "preposterous." The judges pointed out that Elizabeth was a party to the settlement, and under it accepted land which she still possessed. "It would be a scandal upon the administration of justice" to permit her to impugn the title. It concluded:

" . . . therefore, in any aspect, the case of these plaintiffs is destitute of merit. There was no actual fraud in the original agreement, the orphans court sale was valid and effective proceeding to divest all title under the will . . . and the laches in the institution of any proceeding to invalidate the title acquired by the orphans court sale is such that it cannot now be entertained."

And it took a parting shot at Elizabeth: "She cannot be permitted to assert her own fraud and obtain a judicial decree founded thereon."¹⁰

Meanwhile, her ejectment case against Henry had come to trial, on substantially the same evidence, and the judge submitted that case to the jury. These laymen were no more convinced than the Supreme Court. They promptly brought in a verdict against Elizabeth.

The community was generally satisfied that both the high court and the jury had rightly judged the Cobham lawsuits. Few could understand why Elizabeth had brought, or such intelligent and reputable lawyers had taken, a case so wanting in merit. The spectacle was satisfactorily ended and could be forgotten.

One by one the embattled Cobhams of that generation passed away. Many of the lawyers, too, went to their last judgment. Henry Oldcastle Cobham and his wife survived. In the eyes of the neighborhood Henry was a worthy citizen, industrious, generous and of good will. He was a reserved and cultured gentleman, devoted to writing, reading and communing with nature from the boulders that surrounded his home. High in the "wild lands" overlooking the river

10. *Sager v. Mead*, 171 Pa. 349, 33 Atl. 355 (1895).

he had made a clearing and built a substantial but not pretentious brick house. "Stoneylonesome" he called it and so it was, for their children met early deaths. The couple was lonely and found consolation in religion.

Having a valuable property but no heirs, Henry and his wife gave Stoneylonesome and the "wild lands" to the Salvation Army, upon condition that it be used as a home for old people. However, they reserved the use of the house and a small annuity, considerably less than the property yielded in oil royalties, for the life of the survivor. This proved to be Henry, and, on his death in August 1915, the Salvation Army took complete possession.

Peace had settled upon the Cobham lands; the old controversy was no more. The title to the property was secure, more secure than most parcels in the Commonwealth, for it was certified by the Supreme Court—at least, that is what the lawyers said.

III.

One day in 1922, while the house was vacant, a woman of middle age appeared at Stoneylonesome and, meeting with no resistance, moved in and asserted that she owned it. She was Blanche Lawson, only living child of the much-defeated Elizabeth Cobham Sager, who had been dead over a quarter of a century. If the will of Lord Cobham had prevailed, Blanche would own all of his real estate—and to take it she was resolved.

The Salvation Army, baffled by what appeared to be the fantasy of an inscrutable woman, went to lawyer David I. Ball. It so happened that he was one of the only survivors of the legal battle, thirty years before, over these same premises. He had been counsel for Blanche Lawson's mother when she assailed the same title with so little success. He thought Blanche must be slightly deranged, as he commenced an action to eject her expecting it would be undefended; for no lawyer, when he learned the history of the case, would dispute the title.

To his surprise, able and astute counsel did defend Blanche's ownership of the premises, with a claim that she took it by devise under the will of Lord Cobham. The Orphans Court sale, Blanche repeated, was induced by fraud; her grandfather did leave personal property enough to pay his debts, but it was concealed and never reported as part of his estate. The sale was therefore invalid; the will as later probated was her source of title. These were the very grounds of her mother's claim, which the Supreme Court, after full trial, so

emphatically rejected. Such an absurd pretension after all those years exasperated the aging lawyer Ball, and he sought the counsel of J. H. Alexander and William S. Clark, two of the County's leading lawyers, who were continuing the old law firm which a generation before vindicated the Orphans Court title. The oil companies, too, were again threatened and were represented by John E. Mullin, experienced in oil and gas litigation.

True it was that the claims of Blanche were stale and discredited by former litigations. But she had not been a party to those earlier actions—was not even of age when they occurred. And the Supreme Court had also held that a grandchild of Lord Cobham had no right of possession or action while the older generation of legatees were alive, and Henry died only about seven years before. It seemed that again in 1922, as thirty years before, the case could not be dismissed on legal points but must be met on the facts, perhaps to be decided by a jury. Even so, how could Blanche in 1922 get any evidence of fraud in the transactions of 1870 that her mother, who took part in them, did not know of and produce in 1890? It was preposterous to believe she could have anything more than the Supreme Court already had declared "flimsy and worthless." Only a veteran in trial work realizes how worrisome is the case in which one is unable to see what there is to worry about. Her lawyers must be convinced they had something—but they were not saying what it was. Boldly seizing possession of the premises was not a woman's caprice; it was a well-planned lawyer's maneuver to shift to the Salvation Army, as plaintiff, the burden of proof which before had been on Elizabeth. It, as plaintiff out of possession, must satisfy the jury that it had the better title. To tear down its claim, Blanche had a numerous and confident battery of counsel: elderly and respected Homer Muse, shrewd and enterprising George Munn, with experienced Maj. C. E. Bordwell as trial counsel, and Mortimer Graham, of the Erie law firm whose senior partner had been the judge who forty years before appointed Blanche's mother a trustee, just, as she said, to collect some funds from England.

This lawsuit attracted little interest from the public. Lord Cobham was forgotten and the case was regarded as useless thrashing over of old straw. But, as the adversaries squared away for trial, the legal profession saw in it most important and interesting questions. Judge Heck, from an adjoining Circuit, was specially designated to preside. The portraits of a long array of President-Judges looked down upon the trial of issues which those judges believed they had long since settled. Counsel for the Salvation Army took up its burden and quickly proved a perfect paper title and rested their case with an outward show

of confidence. One indispensable link of their title was the Orphans Court proceedings to sell the real estate to satisfy Cobham's debts. If that was vulnerable to attack, they were in trouble.

Counsel for Blanche called to the witness stand a well-groomed, easy-mannered man of sixty-six years. The courtroom became tense and alert when he identified himself as Fred P. Cobham, son of Gen. George A. Cobham, that nephew-stepson of Lord Cobham who died for the Union cause at Peach Tree Creek. The witness had been a boy of about eleven years when "Lord Cobham" died and, because of reasons or influences no one understood, was not mentioned in his will. So the youngster took no part in the Cobham litigation, kept up no intimacy with the family, and lived most of his life away from the scenes of their struggles.

Cobham told of Cobham Park as he remembered it and related rambling bits of family history. Then counsel showed him, from court records, the inventory of Lord Cobham's estate and asked bluntly if he knew whether other personal property was on the place at the time of "Lord" Cobham's death. His answer was a firm and unequivocal "Yes." "What was it?" "Jewels, family jewels, that were not taken into consideration—heirlooms." He proceeded to relate amazing incidents which had never been brought to light in previous litigations.

In 1880, ten years after Lord Cobham's death and as many years before the first cry of fraud was heard in court, John Cobham, the English nephew who will be remembered as a contingent legatee, came to America and employed S. T. Allen, of the Allen and Sons law firm, to investigate the handling of the Cobham estate. Allen held a series of conferences at which the children of Lord Cobham explained his affairs to their inquisitive cousin. This witness, then a youth, was considering law as a profession, and, at lawyer Allen's request, attended these conferences as a sort of secretary and meticulously recorded the conversations. When it was all over, Allen told him he better keep his notes, for they might have some effect on the property. He produced a sheaf of these notes, made over forty years before. They bore every indication of authenticity. And this is what they disclosed.

The daughters and Henry Cobham freely admitted to John Cobham that considerable personal property—enough to pay all of Cobham's debts—was concealed from the administrator, because they wanted to force the sale of the real estate. There was farm equipment, which they sold and whose proceeds, amounting to about \$3,000, they divided. John Cobham then asked what had become of all the heirloom jewelry which he knew the family brought to America. The daughters and Henry admitted that this was still in their possession

and had not been returned as part of the estate. They agreed to bring it to the next meeting.

At a conference the following Monday, February 16, 1880, Henry Cobham produced a document by which he and the daughters had agreed upon a secret out-of-court division of the personal estate among themselves. It was a copybook in which they made and signed their private inventory and appraisal, quite different from the one filed with the Orphans Court. It bore the signatures of all those who acquired the real property through the Orphans Court sale. The witness had kept the document, which he now handed over. It seemed genuine and the court admitted it in evidence. It itemized a quantity of jewelry and recited "value stated is what Tiffany Jewelers in New York City told father it was in 1868." Among other items was a gold band ring marked, "Elijah Cobham 1730." The value of the heirlooms totaled \$3,553. The instrument also listed Cobham's debts, which totaled \$1,266.73, including funeral and burial expense.

Henry Cobham was persuaded to bring to the following conference an old iron "strong box" containing the jewelry. With acquiescence of the daughters, he told John Cobham to select what he would accept in settlement of his claims. When he set aside a diamond necklace and some other items, including the gold band ring, Henry protested that his selections were worth \$3,500, but after some bickering a settlement in jewels was agreed upon and a satisfied British cousin went home. Before sailing, however, he presented to the witness, perhaps in appreciation of his secretarial service, the gold band ring. Yes, he still had it. He handed a well-worn band to the court in which was still visible the engraving, "Elijah Cobham 1730." Who was Elijah Cobham? "He was a slave trader in the Indian market." He had been one of the builders of the Cobham fortune. "You may cross-examine," counsel for Blanche condescendingly said to counsel for the Salvation Army.

Few more difficult and hazardous tasks could confront a lawyer. The testimony was so circumstantial and so well-documented that it seemed invulnerable to cross-examination. Yet, it was so damaging that the only apparent line of attack must be ventured. This was that the witness claimed to have been in possession of this vital evidence since 1880, and knew of the litigations about 1891 involving the same issues. When it was so important, why did he not disclose it? His answer was, "Don't know why I should get in bed with them. I had no great love for them—tried to beat me out of everything." So he had never made his story available to the litigious elder Cobhams. But Mrs. Lawson, like himself, of a later generation, had no part in

"beating him," so he told his story to her. His manner was frank and his explanation not improbable. Nothing was available at that time to discredit or contradict him and, if ever there was a contrary version, the passage of the years had put it beyond mortal proof. Judge Heck sent the case to the jury, which promptly returned a verdict for Blanche, nullifying the Salvation Army's title derived from the Orphans Court sale and validated by the Supreme Court's decision.

There were many legal moves which need not detain us long. Judge Heck granted a new trial. The evidence was repeated and again the jury found for Blanche. Judge Rossiter, of Erie, presiding specially at the latter trial, denied the Salvation Army's motion for judgment notwithstanding the verdict. He said: "We can come to no other conclusion than that the verdict on the evidence is correct, although we have been unable to arrive at any satisfactory conclusion as to how it happened that men of such high character and standing as Judge Lindsey, Judge Noyes, Judge Johnson and others were parties to what, under the evidence in this case, was such an apparent fraud, unless it was that they were mistaken in the ultimate legal effect of what they did." Judgment sustaining Blanche and in effect ousting the Salvation Army stood.

And so the Salvation Army appealed to the Pennsylvania Supreme Court to sustain again in 1928 a title it had declared good in 1895. The issue was not an easy one to present or decide. Whatever the merits of the particular case, it was a startling threat to the security of land titles. Yet, it was hard to deny that Cobham's testimony justified the verdict. Had the Orphans Court been informed of the events related by Cobham, it surely would not have ordered the sale. The concealment, on its face, seemed to be a fraud.

But, in spite of its apparent conclusiveness, Cobham's story raised some serious questions which might have been answered if the events had been related in the 1890 litigation when parties and witnesses were alive who could explain them. Even if Fred Cobham had refused or was not available to testify, Elizabeth and her lawyer both took part in these events and could have testified to their occurrence. They were not easily forgotten transactions. Yet, Elizabeth had tried repeated lawsuits without mention of this evidence, which, if unexplained, would have won for her. If the whole family in 1870 consciously entered into a scheme to deceive the court—perhaps their own attorneys—and to defraud their own offspring, why did they so readily confess it all in 1880 to an English cousin whose chance of proving it against them was slight? And what was his standing or claim, anyway, that the family should try to pacify him with jewels? He was

not an heir and was only a legatee under the will upon contingencies that had not occurred. That Fred Cobham had told the truth, so far as he knew it, was taken for granted, but did he know the whole truth? Were the jewels ever the individual property of the irresponsible and debt-ridden Lord Cobham? Were they not more likely the separate property of Catherine, gifts, perhaps, from her aunt, or from her first husband, and found in Cobham's possession only because he never bothered to settle his wife's estate? His ownership was inferred from mere possession, but his title seems never otherwise to have been established.

If the Supreme Court pondered these doubts, it avoided deciding them. It assumed that a conspiracy to defraud was proven. But, even so, it held that the Salvation Army was a purchaser for value, because it agreed to pay Henry and his wife annuities for life, and it was without notice of the fraud. Hence, it refused to "subvert the decrees of the orphans' court after more than fifty years, and subsequent to the deaths of all the parties who knew the facts."¹¹

This reasoning settled one thing. Blanche must get out of Stoneylonesome and leave it to the Salvation Army. Like many a decision, it settled a lawsuit without settling the law. Was it to be inferred that if the property were still in the hands of Henry, or his heir or devisee, the title could be overturned on such a record? If he had given it to the Salvation Army with no strings attached, would title have been set aside? The idea that the promise to return a small annuity was consideration which made the charity a purchaser for value seemed somewhat unrealistic in view of the value and yield of the grant. If Henry's title had an infirmity because based on deception of the Orphans Court, should it become validated by a wholly fortuitous method of conveyancing? These were questions long debated at the local bar. But it was recognized that the court faced a dilemma not likely ever to be repeated and was entitled to some latitude in finding a way out.

A half-century of strife, few decades of which did not witness some new and ingenious litigation, had finally cleared the Cobham lands from the cloud of these visionary trusts. The law snatched Stoneylonesome from Lord Cobham's granddaughter when it had seemed within her grasp. His dream that the lands should stay with those of his blood was broken.

IV.

But Lord Cobham was not the last daydreamer of his quixotic breed. Henry, in spite of his experiences with his stepfather's illusions

11. *Salvation Army v. Lawson*, 293 Pa. 459, 143 Atl. 113 (1928).

of grandeur, was also a castle builder. Stoneylonesome, as a perpetually endowed home for the aged to commemorate Henry's life and works, also proved visionary, impractical and vainglorious. The house was isolated, inaccessible and ill-adapted to the purpose.

So again the Cobham grand design was but an illusion. Again the Orphans Court was besought to extricate Cobham lands from Cobham fantasy. In 1944, the Salvation Army petitioned the court to sell the surface rights to the Stoneylonesome property. It declared that it was not practically possible to establish on the site the home for the aged that Henry Cobham had projected. But it recited that it had been able to find, on acceptable terms, a willing purchaser. Once more the Orphans Court decreed a sale of Cobham property. The purchaser was, of all persons, Blanche Lawson.